

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

RUSSELL BUCKLEW,

Plaintiff,

vs.

GEORGE LOMBARDI, et al.,

Defendants.

Civil Action No. 4:14-CV-8000-BP

Hon. Beth Phillips

**PLAINTIFF’S MOTION FOR A TEMPORARY STAY
OF DEADLINE TO FILE RESPONSE TO DEFENDANTS’ MOTION
FOR SUMMARY JUDGMENT PENDING RECEIPT OF ADDITIONAL DISCOVERY**

Plaintiff Russell Bucklew, by and through his attorneys, moves the Court for an Order briefly staying the existing Summary Judgment briefing schedule, including the deadline for Plaintiff’s response, pending receipt of additional discovery pursuant to the Court’s April 11, 2017 Order Granting in Part and Denying in Part Plaintiff’s Motion to Compel (the “Order”). ECF 183. In support of this motion, Plaintiff states as follows:

1. On April 10, 2017, Defendants filed a Motion for Summary Judgment. ECF 181-182.

2. In their motion, Defendants argue, *inter alia*, that “the record refutes the claim that any method of lethal injection is sure or very likely to cause serious injury and needless suffering” as a result of Mr. Bucklew’s unique medical condition. ECF 182, Legal Memorandum In Support of Defendants’ Motion for Summary Judgment (“Defs. MSJ”) at 3. Defendants also argue that the record refutes any finding that lethal gas is a feasible alternative method of execution. *See id.* at 8.

3. Pursuant to the Court's scheduling order, Plaintiff's Response to Defendants' Motion for Summary Judgment is due on May 1, 2017. ECF 131, Order Amending the Scheduling Order ¶ 4.

4. On April 11, 2017 this Court entered an order granting in part Plaintiff's Motion to Compel additional discovery from Defendants. ECF 183, Order.

5. In relevant part, the Order directs the parties to meet and confer regarding the search for and production of e-mail communications within seven days of the Court's Order. *See* Order at 18-19. Specifically, the Order contemplates the search of e-mails related to Plaintiff's medical condition and fitness for execution under the current protocol. *See* Order at 11, 18-19. The Order also contemplates the search for and production of additional e-mails related to the feasibility of execution by lethal gas. Order at 19.

6. Documents resulting from these searches are likely to have a direct impact on Plaintiff's response to Defendants' summary judgment arguments, including with respect to the effect execution by lethal injection will have on Mr. Bucklew in light of his unique medical condition, as well as Defendants' contention that lethal gas is not a feasible alternative method of execution.

7. Plaintiff and Defendants have moved rapidly in response to the Order. On April 13, 2017, the parties held a meet and confer regarding initial search terms and custodians.

8. During the meet and confer, the parties reached agreement on an initial set of search terms and custodians calculated to yield documents relevant to Plaintiff's claims concerning the effect lethal injection may have on Plaintiff given his unique medical condition as well as the efficacy of lethal gas.

9. Defendants explained, however, that while they are prioritizing these email searches, they are unable to provide an estimated date for production. Defendants also raised concerns regarding the challenges of completing these searches under a compressed timeframe—a challenge largely resulting from Defendants’ failure to engage Plaintiff in meet and confer discussions in December 2016 when they first discovered 38,000 potentially relevant e-mails. *See* ECF 183, Order at 18-19.

10. Plaintiff is committed to moving forward with all due speed with respect to the discovery set forth in the Order, and appreciates Defendants’ efforts to undertake the search and production of documents in an expeditious manner. However, it will necessarily take the Defendants additional time to search for, review, and produce emails using the terms and custodians agreed upon by the parties.

11. Further, once Defendants have made their production at a yet-to-be-determined date, Plaintiff will then need to review these documents in order to determine whether they should be incorporated into Plaintiff’s Response to Defendants’ Motion for Summary Judgment (“Plaintiff’s Response”). Moreover, the potential production population could number in the thousands of documents, even after applying the parties’ targeted search terms. *See* Order at 18; *see supra* ¶9.

12. Thus, even if Defendants are able to produce relevant documents prior to the deadline for Plaintiff’s Response, Plaintiff would be placed in the difficult position of attempting simultaneously to review the documents and incorporate them into the Response.

13. Accordingly, a brief stay of the briefing schedule would allow additional time for Defendants to search for and produce documents, and for Plaintiff to review and incorporate these documents into his Response to Defendants’ Motion for Summary Judgment. Plaintiff will

undertake every effort to review the newly-produced documents and file its Response as expeditiously as possible.

14. On April 13, 2017, Plaintiff informed Defendants of his intent to file a motion requesting a brief stay of the deadline, pending the outcome of the additional email searches, and asked if they intended to oppose the motion. Defendants responded that they would oppose the motion.

15. For the foregoing reasons, Plaintiff respectfully requests that this Court enter an order briefly staying the existing Summary Judgment briefing schedule, including the deadline for Plaintiff's Response, on condition that the parties report to the Court regarding the status of discovery no later than May 1, 2017.

Dated: April 14, 2017

Respectfully Submitted,

By: Cheryl A. Pilate

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Counsel for Plaintiff Russell Bucklew

CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2017, the foregoing Motion for a Temporary Stay of Deadline to File Response to Defendants' Motion for Summary Judgment Pending Receipt of Additional Discovery was served via the Court's electronic filing system on Michael J. Spillane, Assistant Attorney General, mike.spillane@ago.mo.gov, and all counsel of record for defendants.

/s/ Cheryl A. Pilate

Cheryl A. Pilate